



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

EMGS  
4303 VICTORY DR  
AUSTIN TX 78704

#### **Respondent Name**

Insurance Co of the State of Pennsylvania

#### **Carrier's Austin Representative Box**

Box Number 19

#### **MFDR Tracking Number**

M4-12-2477-01

#### **MFDR Date Received**

March 19, 2012

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "I believe these dates of service were denied incorrectly and were in the best interest of the patient's health."

**Amount in Dispute:** \$822.21

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** Written acknowledgement of medical fee dispute received however, no response submitted.

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 5, 2011	99211,25 - Office or other outpatient visit for the evaluation and management of an established patient 95900,59 - Nerve conduction, amplitude and latency/velocity study, each nerve; motor, without F-wave study 95904 - Nerve conduction, amplitude and latency/velocity study, each nerve; sensory 95860 - Needle electromyography; 1 extremity with or without related paraspinal areas 95903 - Nerve conduction, amplitude and latency/velocity study, each nerve; motor, with F-wave study	\$822.21	\$822.21

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.20 sets out requirements for medical bill submission by health care providers.
3. 28 Texas Administrative Code §133.203 sets out the reimbursement guidelines for professional medical services.

4. 22 Texas Administrative Code §75, effective December 24, 2009, 34 *Texas Register* 9208, sets out the scope of practice for chiropractors.
5. District Court of Travis County, 250<sup>th</sup> Judicial District No. D-1-N-GN-06-003451, Honorable Stephen Yelenosky, judge presiding, Order on cross-motions for partial summary judgment dated November 24, 2009
6. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012
7. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Mandate dated August 8, 2013
8. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - 16 – Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
  - 1 – Billing provider's name does not appear on the medical records
  - \* -Service does not fall within the scope of the providers practice.
  - \* -Our position remains the same if you disagree with our decision please contact the TWCC Medical Dispute Resolution.

### **Issues**

1. Did the requestor submit the claim in compliance with Division guidelines?
2. Is the rendering provider eligible to perform needle electromyography?
3. Is the rendering provider eligible to perform nerve conduction tests?
4. Is the requestor entitled to reimbursement for the nerve conduction tests?

### **Findings**

1. The carrier denied the disputed service as 1 – “Billing provider's name does not appear on the medical records”. Review of the submitted medical bill identified as “corrected claim” found two National Provider Identifiers. Research of the National Plan & Provider Enumeration System, <https://npiregistry.cms.hhs.gov/NPPESRegistry/NPIRegistryHome>, found the following information;
  - a. (CMS 1500 24-J) – NPI 1609948314 linked to Dr. Curt Erikson Cook DC
  - b. (CMS 1500 33-a) – NPI 1154490191 linked to TOTH Enterprises II dba Victory Medical & Family Care

Review of the medical documentation, “Interpretation of Neurodiagnostic Test”, lists Victory Medical and Family Care. Therefore, the carriers' denial is not supported.

### **Litigation Background for Needle EMG and MUA**

Portions of the Texas Board of Chiropractic Examiners rules of practice were challenged by the Texas Medical Association and the Texas Medical Board in 2009. At issue was whether 22 Texas Administrative Code §75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) were within the scope of chiropractic practice in Texas. Specifically, the parties sought judgment on whether rules allowing Chiropractors to perform needle electromyography (EMG) and manipulation under anesthesia (MUA) were valid. On November 24, 2009, the 345th District Court issued a judgment in which presiding judge Honorable Stephen Yelenosky concluded that needle EMG and MUA exceeded the statutory scope of chiropractic practice in Texas. The Texas Board of Chiropractic Examiners appealed the district court's judgment to the Texas Court of Appeals, Third District. The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice. The Chiropractic Board exhausted its appeals and on August 8, 2013, the mandate affirming the district court's judgment was issued. The mandate states “...we affirm the remainder of the district court's judgment that subparts 75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) of the Texas Board of Chiropractic Examiners' scope-of-practice rule are void.” In accordance with the Texas Court of Appeals opinion, the final mandate, and the scope of chiropractic practice requirement in 28 Texas Administrative Code §134.203(a)(6), needle EMG and MUA services may not be reimbursed.

2. Disputed service code 95860 is described as needle electromyography; 1 extremity with or without related paraspinal areas. According to the medical documentation found, this service was performed by Curt Erickson Cook, D.C. (Doctor of Chiropractic). Needle EMG involves insertion of a needle into a patient's muscle for the purpose of measuring electrical signals from that muscle. 28 Tex. Admin. Code section 134.203(a)(6) states “Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act.” The division finds that disputed service code 95860 is not within the scope of chiropractic practice because it is an electro-diagnostic test that involves the insertion of a needle into the patient. The carrier's denial that the provider was not eligible to perform this service is supported. No reimbursement can be recommended for the needle EMG pursuant to 28 Tex. Admin. Code section 134.203(a)(6).

3. Disputed services 95900, 95903, and 95904 fall in the category of nerve conduction tests under applicable AMA current procedural terminology (CPT). These tests involve placing a stimulating electrode directly over the nerve to be tested. These are surface tests that do not involve needles. According to the medical documentation found, these services were performed by Curt Erickson Cook, D.C. (Doctor of Chiropractic). As stated in the Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012

In the second provision, paragraph(c)(3)(A), TBCE imposed certification and supervision requirements on any licenses who administered "electro-neuro diagnostic testing" that varied according to whether the testing was "surface (non-needle)" or involved the use of needles. The import or effect of paragraphs (c)(2)(D) and (c)(3)(A), as the parties agree, was that chiropractors with specified training and certification could utilize needle EMG in evaluating or examining patients. In their live petitions and summary-judgment motions, the Physician Parties challenged the validity of the two rule provisions **specifically addressing needle EMG** [emphasis added]- 75.17(c)(2)(D) and (c)(3)(A) – plus the general standard regarding use of needles-75.17(a)(3)."

That is, surface tests were not in question during this suit. Pursuant to §75.17(c)(3)(A) effective December 24, 2009, 34 *Texas Register* 9208, services 95903, 95904, and 95934 are within the scope of chiropractic practice because they are surface tests. The workers' compensation carrier denial of "\*\* -Service does not fall within the scope of the providers practice", is therefore not supported. Reimbursement is recommended for these services.

4. 28 Texas Administrative Code §134.203(c) is the applicable division fee schedule for calculation of the maximum allowable reimbursement for the services in dispute. For services in 2011, the maximum allowable reimbursement = (TDI-DWC Conversion Factor / Medicare CONV FACT) x Non-Facility Price or;

Code	MAR Calculation	Units	Allowable
99211	$(54.54 / 33.9764) \times 19.59$	1	\$31.45
95900	$(54.54 / 33.9764) \times 59.82$	2	\$192.04
95904	$(54.54 / 33.9764) \times 52.7$	6	\$507.60
95860	Not within scope of practice	1	0.00
95903	$(54.54 / 33.9764) \times 69.22$	4	\$444.44
		TOTAL	\$1,175.53

The total allowable for the services in dispute is \$1,175.53. The requestor is seeking \$822.21. This amount is recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$822.21.

### **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$822.21, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
February 5, 2014  
Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC

Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**